

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Federal Trade Commission; all Fifty States, and the District of Columbia,

No. CV-15-00884-PHX-NVW

Plaintiffs,

ORDER SETTING RULE 16 SCHEDULING CONFERENCE

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Cancer Fund of America, Inc., a Delaware corporation, et al.,

Defendants.

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a Scheduling Conference is set for November 20, 2015 at 1:30 p.m. in Courtroom 504, Sandra Day O'Connor U.S. Courthouse, 401 West Washington Street, Phoenix, Arizona 85003. In preparation for this Scheduling Conference,

IT IS HEREBY ORDERED as follows:

INITIAL DISCLOSURES

The parties are ordered to provide initial disclosures by no later than Friday, October 9, 2015, in the form required by Federal Rule of Civil Procedure 26(a)(1). The parties shall file with the Clerk of Court a Notice of Initial Disclosure; copies of the actual disclosures need not be filed. The parties are not free, without order of the Court, to delay or defer exchange of Rule 26(a)(1) initial disclosures to a time after their Rule 26(f) Meeting to prepare the joint proposed Discovery Plan.

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1 **COMMENCEMENT OF DISCOVERY PERMITTED AND REQUIRED**

2 The limitation on the commencement of formal discovery set forth in Federal Rule
3 of Civil Procedure 26(d) is waived. Formal discovery not only may commence at any
4 time after service of process, but the Court expects discovery to commence prior to the
5 Scheduling Conference. The parties shall serve initial document discovery requests at
6 least 14 days before the Scheduling Conference.

7 **CORPORATE DISCLOSURE STATEMENT**

8 Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, any
9 nongovernmental corporate party to an action or proceeding must file a Corporate
10 Disclosure Statement. If not previously filed, the Court directs any nongovernmental
11 corporate party to file its Corporate Disclosure Statement within 10 days of receipt of this
12 Order. Forms are available on the Court's website.

13 **RULE 26(f) MEETING AND CASE MANAGEMENT REPORT**

14 The parties are directed to meet and confer no later than **Friday, October 30, 2015**. At this Rule 26(f) Meeting, the parties shall develop a joint proposed Discovery
15 Plan which contains the following information in separately numbered paragraphs:

16 1. The parties who attended the Rule 26(f) Meeting and assisted in developing
17 the Plan;

18 2. A short statement of the nature of the case (**3 pages or less**), including a
19 description of each claim and defense;

20 3. A description of the principal factual and legal disputes in the case;

21 4. The jurisdictional basis for the case, citing specific jurisdictional statutes;¹

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25 ¹ If jurisdiction is based on diversity, the basis shall include a statement of the citizenship
26 of every party. *See* 28 U.S.C. §1332. The parties are reminded that (1) a corporation is a
27 citizen of the state where it is incorporated and the state of its principal place of business
28 and (2) partnerships and limited liability companies are citizens of every state in which
one of their members or partners is a citizen. *See* 28 U.S.C. §1332(c); *Indus. Tectonics v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 692 (7th Cir. 2003).

1 5. Any parties which have not been served and an explanation of why they
2 have not been served; and any parties which have been served but have not answered or
3 otherwise appeared;

4 6. A statement of whether any party expects to add additional parties to the
5 case or otherwise to amend pleadings (the Court will set a deadline of not later than 90
6 days after the Scheduling Conference to join parties or amend pleadings);

7 7. A listing of contemplated motions and a statement of the issues to be
8 decided by these motions (including motions under Federal Rules of Evidence 702, 703,
9 704, and 705);

10 8. Whether the case is suitable for reference to arbitration or a United States
11 Magistrate Judge for trial;

12 9. The status of related cases pending before other courts or other judges of
13 this Court;

14 10. A statement of when the parties exchanged Federal Rule of Procedure 26(a)
15 initial disclosures;

16 11. A discussion of necessary discovery, including:

17 a. The extent, nature, and location of discovery anticipated by the
18 parties;

19 b. Suggested changes, if any, to the discovery limitations imposed by
20 the Federal Rules of Civil Procedure;

21 c. The number of hours permitted for each deposition, unless extended
22 by agreement of the parties;

23 12. Proposed specific dates for each of the following (deadlines should fall on a
24 Friday unless impracticable):

25 a. A deadline for the completion of fact discovery² and disclosure

26 ² The discovery deadline is the date by which all discovery must be completed.
27 Discovery requests must be served and depositions noticed sufficiently in advance of this
28 date to ensure reasonable completion by this deadline, including time to resolve
discovery disputes. Absent extraordinary circumstances, the Court will not entertain
discovery disputes after this deadline.

15 The parties shall jointly file the Discovery Plan with the Clerk (e-file the Plan
16 using the “Other Documents” category and use the drop down event “Report re:
17 Rule 26(f) Planning Meeting”) no later than **Friday, November 13, 2015** (absent
18 extraordinary circumstances, no extensions of time will be granted). It is the
19 responsibility of Plaintiff(s) to initiate the Rule 26(f) Meeting and preparation of the joint
20 Discovery Plan. Defendant(s) shall promptly and cooperatively participate in the Rule
21 26(f) Meeting and assist in preparation of the proposed Plan. .

22 SCHEDULING CONFERENCE AND ORDER

23 The Court directs counsel to Rule 16 of the Federal Rules of Civil Procedure for
24 the objectives of the Scheduling Conference. Counsel who will be responsible for trial of

³ No expert witness not timely disclosed will be permitted to testify unless the party offering such witness demonstrates: (a) that the necessity of such expert witness could not have been reasonably anticipated at the time of the deadline for disclosing such expert witness; (b) the Court and opposing counsel or unrepresented party were promptly notified upon discovery of such expert witness; and (c) that such expert witness was promptly proffered for deposition. *See Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).

1 the lawsuit for each party shall appear and participate in the Scheduling Conference and
2 shall have authority to enter into stipulations regarding all matters that may be discussed.
3 A continuance of the Scheduling Conference will be granted only for good cause and will
4 not be granted beyond the time limit set forth in Federal Rule of Civil Procedure
5 Rule 16(b).

6 During or after the Scheduling Conference, the Court will enter a Scheduling
7 Order. The form of the Court's standard Scheduling Order can be found on the Court's
8 website at www.azd.uscourts.gov under Judges & Courtrooms; Orders/Forms &
9 Procedures/Judge Wake. The Court fully intends to enforce the deadlines in the
10 Scheduling Order. The parties should plan their litigation activities accordingly.

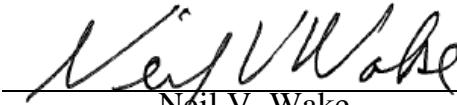
11 **OTHER MATTERS**

12 Counsel for all parties are expected to comply fully with the Federal Rules of Civil
13 Procedure and Local Rules and to minimize the expense of discovery.

14 Counsel should ensure that all pleadings comply with LRCiv 7.1 and LRCiv 7.2.

15 DATED this 14th day of September, 2015.

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Neil V. Wake
United States District Judge